

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-2107

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ELIZABETH POWELL, DALREE MAPP, KATHERINE
PURRINGTON, ALTHEA McDANIELS, PAULA
HERBERT, CYNDI REED, and MARGARET GATLING,
on behalf of themselves and all other
similarly situated,

Plaintiffs-Appellees,

-against-

BENJAMIN WARD, Commissioner of Correc-
tional Services and JANICE WARNE,
individually, and as Superintendent of
Bedford Hills Correctional Facility,

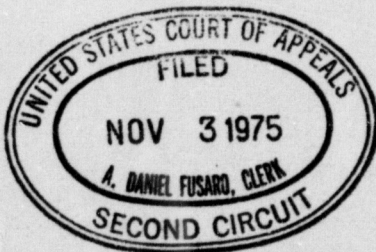
Defendants-Appellants.

[ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK]

APPENDIX

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Relevant Docket Entries

Elizabeth Powell, et al.

-against-

Peter Preiser, et al.

Date	Proceedings
Oct. 22-74	Filed complaint & issued summons.
Oct. 29-74	Filed pltfs. affdt. and notice of motion enjoining defts. from holding adjustment committee hearings against any prisoner in Bedford Hills unless the adj. committee complies with the standards set forth as indicated, etc. ret. on Nov. 1, 1974.
Oct. 29-74	Filed pltfs. memorandum of law in support of motion for prel. injunction.
Nov. 27-74	Hearing begun.
Dec. 3-74	" cont'd.
Dec. 10-74	" "
Dec. 13-74	" "
Dec. 16-74	" " and concluded.
	Dec. Res.
Dec. 31-74	Filed plaintiff's post trial hearing memorandum.

Relevant Docket Entries

Date	Proceedings
Jan. 1-75	Filed Notice of Motion, returnable 1/23/75 at 10 AM, for the creation of class consisting of all persons who are now and who may be in the future incarcerated Bedford Hills Correctional Facility on grounds that prerequisites are satisfied etc.
Jan. 14-75	Filed memorandum in support of Motion to declare the class.
Feb. 4-75	Filed pltf. amended complaint.
Feb. 7-75	Filed notice of motion for an order dismissing the amended complaint on 2-13-75.
Feb. 7-75	Filed memorandum in support of motion to dismiss the amended complaint (by defts.).
Feb. 19-75	Filed Memorandum in opposition to motion to dismiss amended complaint.
Mar. 31-75	Filed MEMO ENDORSED on notice of motion filed 1-14-75. We grant pltfs. uncontested motion to certify the creation of a class consisting of all persons who are now or who may be incarcerated at Bedford Hills Correctional Facility or Fishkill Correctional Facility, and who are or may be subject to adjustment committee proceedings or superintendents proceedings at those institutions. To facilitate the granting of any possible relief, we divide the class into two subclasses: (a) inmates at Bedford Hills, and (b) inmates at Fishkill, - So ordered - Stewart, J. m/n

Relevant Docket Entries

Date	Proceedings
Mar. 31-75	Filed Memo. End. on motion filed 2-7-75. Thus, pltf's. should now serve deft Turnello with process, if they have not yet done so. Deft. motion to dismiss the amended complaint is denied - So ordered - Stewart J. m/n
April 4-75	Filed MEMORANDUM # 4221. Plaintiff Carol Crooks' motion for preliminary injunction to enjoin the imposition of 45 and 35-day penalties is denied for reasons stated herein. Defts. motion to vacate the T.R.O. against them entered 2-5-75 by Judge Franklin [Frankel] is granted. So ordered - Stewart, J. - m/n to defts. - m/n to pltf. by pro-se clerk.
April 28-75	Filed Transcript of record of proceedings, dated Nov. 27, Dec. 3, 4, 13, 16, 1974.
April 28-75	Filed defts. post hearing memorandum.
April 24-75	Filed Opinion # 423a. For all reasons stated the Court enjoins defendants as indicated herein. This opinion shall be considered the findings of fact and conclusions of law in accordance with rule 52(a). Settle order on five days notice. So ordered - Stewart, J. m/n

Relevant Docket Entries

Date	Proceedings
June 24-75	Filed Order that defts. shall conduct all adjustment Committee or Superintendent's, or other disciplinary proceedings that may result in an inmate at Bedford Hills Correctional Facility being confined in a Special Housing Unit or Segregation in accordance with the following procedures herein as indicated. So ordered - Stewart J. m/n
July 24-75	Filed notice of appeal by defts. to the U.S.C.A. for the Second Circuit from an order entered on 6-24-75. Mailed copies to Stephen M. Latimer.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH POWELL, DALENE HAPP,
KATHLEEN MURKINGTON, ALTHEA
MCDONALD, PAULA HERBERT, CANDI
PEED and MARGARET GRILLING, on Behalf
of themselves and all Others
Similarly Situated,

COMPLAINT

CLASS ACTION

Plaintiffs;

-against-

PETER PREISER, individually and as
Commissioner of Correctional
Services, and JAMICE WARD, individually
and as Superintendent of Bedford Hills
Correctional Facility,

Defendants.

JURISDICTION

1. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. 1343, to redress deprivations of rights, privileges and immunities guaranteed to Plaintiffs under 42 U.S.C., 1983; 28 U.S.C. 2201, 2202 and the 5th and 14th Amendments to the United States Constitution.

CLASS ACTION

2. This is a class action pursuant to Rule 23(a) and (b) (2) of the Federal Rules of Civil Procedure. It is brought on behalf of all persons incarcerated in Bedford Hills Correctional Facility ("Bedford Hills") who are or will be the subject of an Adjustment Committee proceeding. There are presently approximately three hundred prisoners in Bedford Hills. Any inmate who misbehaves, as determined by the guards, will be summoned to appear before the Adjustment Committee, and on information and belief, most do at one time or another during their confinement. The class is therefore so numerous as to make joinder of all members impracticable.

3. Plaintiffs are inmates of Bedford Hills. They have all been the subject of Adjustment Committee proceedings, and, as set forth below, will meet

COMPLAINT

with the Adjustment Committee on at least one more occasion. They have all been placed in segregation by Adjustment Committee action. They will thus fairly and adequately protect the interests of the class.

4. There are questions of law or fact common to the class as to whether the way in which the Adjustment Committee functions violates the class' rights under the Fifth and Fourteenth Amendments to the United States Constitution. Defendants have acted and refused to act, and will continue to act and refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

PARTIES

5. All Plaintiffs are inmates at Bedford Hills and are serving sentences imposed by the New York State Supreme Court upon conviction of one or more felonies. All have been the subject of Adjustment Committee meetings since June 26, 1974, the Date the U.S. Supreme Court Decided. *Wolff v. McDonnell*, 42 U.S.L.W. 5190.

6. Defendant PETER PREISEN is Commissioner of Correctional Services of the State of New York. He is responsible for the administration of the Department of Correctional Services and all institutions, including Bedford Hills, under the aegis of the Department. He must review all cases where a prisoner is confined in solitary confinement for more than 30 days. Defendant JANICE WARNE is Superintendent of Bedford Hills. She is responsible for supervision and management of the prison. She may review all Adjustment Committee proceedings, in her discretion, and must do so where a prisoner is confined in solitary confinement for more than 30 days.

FIRST CLAIM

7. On or about August 29, 1974, a serious disturbance occurred at Bedford Hills involving, on information and belief, approximately 70 prisoners. As a result, approximately 28 women, including Plaintiffs were placed in

COMPLAINT

solitary confinement for up to two weeks without receiving notice of the charges against them.

8. On August 9, 1974, and again on August 12, 1974, Plaintiff DALLAN MAPP was the subject of an Adjustment Committee proceeding. She was ordered confined in segregation by the Adjustment Committee. She was given no advance written notice of the proceedings, and was not given a written statement of the disposition of the charges including the evidence relied on and reasons for the disposition.

9. Prior to August 28, 1974, Plaintiff Elizabeth Powell was the subject of an Adjustment Committee proceeding. She was ordered confined in segregation by the Adjustment Committee. She was given no advance written notice of the proceeding, she was not permitted to call witnesses, nor was she given a written statement of the disposition of the charges including the evidence relied on and the reasons for the disposition.

10. Following the events of August 29, 1974, and on or about August 30, 1974, Plaintiffs Purrington, Golston, McDaniels, Herbert, Reed, Powell and Gatling were placed in segregation. Each was seen by the Adjustment Committee twice before being referred to a Superintendents Proceeding. In addition to the punishment awarded at the Superintendents Proceeding each was referred back to the Adjustment Committee.

A) Plaintiff Purrington was seen by the Adjustment Committee on September 2nd and 9th, 1974. She was served with written notice of charges against her on September 9, 1974 after having been confined in segregation for eleven days.

B) Plaintiff Golston was seen by the Adjustment Committee on September 2nd, 9th and 13th, 1974. She was served with written notice of the charges on September 16, 1974, 18 days after she was placed in segregation.

C) Plaintiff McDaniels was seen by the Adjustment Committee on August 31st, September 6th and 12th, 1974. She was served with written notice

COMPLAINT

of charges on September 13, 1974. 15 days after she was placed in segregation.

E) Plaintiff Reed was seen by the Adjustment Committee on September 2nd, and 9th, 1974. She was served with written notice of charges on September 13, 1974, 14 days after she was placed in segregation.

F) Plaintiff Powell was seen by the Adjustment Committee on September 2nd, 9th, 13th, 20th and 27th, 1974. She was served with written notice of charges on September 18, 1974, 20 days after she was placed in segregation.

G) Plaintiff Gatling was seen by the Adjustment Committee on August 31st, September 6th, 13th, 20th and 27th, 1974. She was served with written notice of charges on September 18, 1974, 20 days after she was placed in segregation.

11. It is the policy of the Adjustment Committee at Bedford Hills that inmates are never given advance written notice of the charges against them, are never permitted to present witnesses in their behalf; and are never given a written statement of the disposition of the Adjustment Committee proceedings, the reasons for that disposition, and the evidence relied on. The proceedings conducted as described above violate Plaintiffs' and the class' right not to be deprived of liberty without due process of law as specified in the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

SECOND CLAIM

12. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 - 6, 9 and 10, as if more fully set forth below.

13. In the case of each Plaintiff alleged to be involved in the August 29, 1974 rebellion, the Superintendents proceeding was held at least twelve days after the incident, upon written notice served no sooner than eleven days after the date the alleged charges arose.

COMPLAINT

14. In each case Plaintiff was held in solitary confinement, without any privileges, from August 30, 1974 until the date of the Superintendents Proceeding. In no case was the Superintendents Proceeding concluded less than 18 days after the prisoner was placed in solitary confinement.

15. On information and belief, it is a common practice to keep prisoners in solitary confinement under punitive conditions for periods in excess of 72 hours between the time an alleged infraction occurred and the time a Superintendents Proceeding is held.

16. Solitary confinement of prisoners for extended periods of time before a disciplinary hearing is held violates their right not to be deprived of liberty without due process of law.

THIRD CLAIM

17. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 - 10 and 13 - 16.

18. All prisoners in Bedford Hills who are segregated from the general population are kept in solitary confinement under punitive conditions. Those prisoners who are segregated for reasons other than punitive ("administrative segregation"), for example, to protect her from other inmates, or to investigate and prepare formal charges, or to protect other inmates, suffer the same rigors and loss of privilege as prisoners who are punitively placed in solitary confinement.

19. Placing prisoners in administrative segregation without affording them the same privileges as the general population consistent with their segregated status violates their right not to be deprived of liberty without due process of law.

WHEREFORE, Plaintiffs pray that this Court :

1. Declare that the Adjustment Committee at Bedford Hills function

COMPLAINT

in such a manner as to violate the class' right not to be deprived of liberty without due process of law.

2. Preliminary and permanently enjoin Defendants, their agents or employees from placing any member of the class in segregation utilizing an Adjustment Committee Proceeding or Superintendents Proceeding, or any other proceeding whatsoever until and unless prisoner:

(a) is given written notice of charges 24-hours in advance of a hearing by the Adjustment Committee or its equivalent;

(b) is given a hearing before an impartial tribunal;

(c) is permitted to present witnesses and documentary evidence in her behalf;

(d) is permitted the assistance of counsel or a counsel substitute of her own choosing; including another inmate;

(e) is given a written statement of the disposition of the charges, the reasons for the disposition, and the evidence relied on.

3. Preliminary and permanently enjoin Defendants from placing any prisoner in non-punitive segregation for more than 24-hours after an alleged infraction without giving her written notice of the charges.

4. Preliminarily and permanently enjoin Defendants from placing any prisoner in non-punitive segregation unless the prisoner is found to present a clear present danger to herself, other inmates or correction officers.

5. Preliminarily and permanently enjoin Defendants from placing any prisoner in non-punitive segregation until and unless the prisoner:

a) is given notice of the reason she is being placed in segregation;

b) is given an opportunity to be heard in her behalf;

c) is given a written statement of the reasons she is being segregated, the evidence relied on, and what standards she must meet to be

COMPLAIN

released from segregation;

6. Preliminarily and permanently enjoin defendants from placing any prisoner in non-punitive segregation unless she is accorded all privileges of the general population consistent with segregated status; and

7. Expunge the records of each member of the class of all Adjustment Committee Proceedings held since June 26, 1974 which do not comply with the provisions of Paragraphs 1 - 6 above;

8. Order such other and further relief as to the Court may seem just and proper.

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Tel. (212) 993-6250

BY: STEPHEN M. LATIMER, Of Counsel
Attorney for Plaintiffs

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAN 27 1975

ELIZABETH POWELL, DAIRIE MAPP,
KATHERINE PURRINGTON, ALTHEA MCDANIELS,
PAULA HERBERT, CYNDI REED, MARGARET
GATLING, TAMMY GELSTON, CARROLL CROOK
and LISLIE MASON, on behalf of
themselves and all others similarly
situated,

* AMENDED COMPLAINT

* CLASS ACTION

Plaintiffs,

* 74 Civ. 4628 (CES)

-against-

PETER PREISER, individually, and as
Commissioner of Correctional Services,
JANICE WARNE, individually, and as
Superintendent of Bedford Hills
Correctional Facility, and VITO TURNELLO,
individually, and as Superintendent of
Fishkill Correctional Facility.

Defendants.

JURISDICTION

1. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. 1343, to redress deprivations of rights, privileges and immunities guaranteed to Plaintiffs under 42 U.S.C. 1983; 28 U.S.C. 2201, 2202, and the 5th and 14th Amendments to the United States Constitution.

CLASS ACTION

2. This is a Class Action pursuant to Rule 23(a) and (b) (2) of the Federal Rules of Civil Procedure. It is brought on behalf of all persons incarcerated in Bedford Hills Correctional Facility ("Bedford Hills"), and women incarcerated in Fishkill Correctional Facility ("Fishkill"), who are or will be the subject of an Adjustment Committee Proceeding or a Superintendents Proceeding. There are presently approximately three hundred prisoners in Bedford Hills and twenty women who

AMENDED COMPLAINT

have been transferred from Bedford Hills to Fishkill. Any inmate who misbehaves, as determined by the guards, will be summoned to appear before the Adjustment Committee and on information and belief, most do at one time or another during their confinement. The Class is therefore so numerous as to make joinder of all members impracticable.

3. Plaintiffs are inmates of Bedford Hills and Fishkill. They have all been the subject of Adjustment Committee Proceedings and Superintendents Proceedings, and as set forth below, will meet with the Adjustment Committee on at least one more occasion. They have all been placed in segregation by the Adjustment Committee action. They will thus fairly and adequately protect the interests of the Class.

4. There are questions of law or fact common to the Class as to whether the way in which the Adjustment Committee and Superintendents Proceeding functions violates the Class' rights under the Fifth and Fourteenth Amendments to the United States Constitution. Defendants have acted and refused to act, and will continue to act and refuse to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

PARTIES

5. All Plaintiffs are inmates at Bedford Hills or Fishkill, and are serving sentences imposed by the New York State Supreme Court upon conviction of one or more felonies. All have been the subject of Adjustment Committee meetings since June 26, 1974, the date the U. S. Supreme Court decided *Wolff v. McDonnell*, 42 U.S.L.W. 5190.

5. Defendant PETER PREISER is Commissioner of Correctional Services of the State of New York. He is responsible

AMENDED COMPLAINT

for the administration of the Department of Correctional Services and all institutions, including Bedford Hills, under the aegis of the Department. He must review all cases where a prisoner is confined in solitary confinement for more than 30 days. Defendant JANICE WARNE and VITO TURNELLO are Superintendents of Bedford Hills and Fishkill, respectively. They are responsible for supervision and management of their respective prisons. They may review all Adjustment Committee proceedings, in their discretion, and must do so where a prisoner is confined in solitary confinement for more than 30 days.

FIRST CLAIM

7. On or about August 29, 1974, a serious disturbance occurred at Bedford Hills involving, on information and belief, approximately 70 prisoners. As a result, approximately 28 women including Plaintiffs, were placed in solitary confinement for up to two weeks without receiving notice of the charges against them.

8. On August 9, 1974, and again on August 12, 1974, Plaintiff DALREE MAPP was the subject of an Adjustment Committee Proceeding. She was ordered confined to segregation by the Adjustment Committee. She was given no advance written notice of the proceedings, and was not given a written statement of the disposition of the charges, including the evidence relied on and reasons for the disposition.

9. Prior to August 28, 1974, Plaintiff ELIZABETH POWELL was the subject of an Adjustment Committee Proceeding. She was ordered confined in segregation by the Adjustment Committee. She was given no advance written notice of the proceedings, and was not given a written statement of the disposition of the charges, including the evidence relied on

AMENDED COMPLAINT

and the reasons for the disposition.

10. Following the events of August 29, 1974, and on or about August 30, 1974, Plaintiffs PURRINGTON, GOLSTON, McDANIELS, HERBERT, REED, POWELL and GATLING were placed in segregation. Each was seen by the Adjustment Committee twice before being referred to a Superintendents Proceeding. In addition, to the punishment awarded at the Superintendents Proceeding, each was referred back to the Adjustment Committee.

a) Plaintiff PURRINGTON was seen by the Adjustment Committee on September 2nd and 9th, 1974. She was served with written notice of charges against her on September 9th, 1974, after having been confined in segregation for eleven days.

b) Plaintiff GOLSTON was seen by the Adjustment Committee on September 2nd, 9th and 13th, 1974. She was served with written notice of the charges on September 16, 1974, 18 days after she was placed in segregation.

c) Plaintiff McDANIELS was seen by the Adjustment Committee on August 31st, September 6th and 12th, 1974. She was served with written notice of charges on September 13, 1974, 15 days after she was placed in segregation.

d) Plaintiff REED was seen by the Adjustment Committee on September 2nd, and 9th, 1974. She was served with written notice of charges on September 13, 1974, 14 days after she was placed in segregation.

e) Plaintiff POWELL was seen by the Adjustment Committee on September 2nd, 9th, 13th 20th and 27th, 1974. She was served with written notice of charges on September 18, 1974, 20 days after she was placed in segregation.

f) Plaintiff GATLING was seen by the Adjustment Committee on August 31st, September 6th, 13th, 20th and 27th, 1974. She was served with written notice of charges on September 18, 1974, 20 days after she was placed in segregation.

AMENDED COMPLAINT

11. Plaintiff MASON was transferred from Bedford Hills to Fishkill on or about September 27, 1974. She has been seen by the Adjustment Committee at Fishkill on several occasions and was confined to her cell as a result of each Adjustment Committee meeting.

12. It is the policy of the Adjustment Committee at Bedford Hills and Fishkill that inmates are never given advance written notice of the charges against them, are never permitted to present witnesses in their behalf; and are never given a written statement of the disposition of the Adjustment Committee proceedings, the reasons for that disposition, and the evidence relied on. The proceedings conducted as described above violate Plaintiffs' and the Class' right not to be deprived of liberty without due process of law as specified in the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983.

SECOND CLAIM

13. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 - 6, 9 and 10, as if more fully set forth below.

14. In the case of each Plaintiff alleged in to involved in the August 29, 1974 rebellion, the Superintendents Proceeding was held at least twelve days after the incident, upon written notice served no sooner than eleven days after the date the alleged charges arose.

15. In each case Plaintiff was held in solitary confinement, without any privileges, from August 30, 1974 until the date of the Superintendents Proceeding. In no case was the Superintendents Proceeding concluded less than 18 days after the prisoner was placed in solitary confinement.

16. On or about August 26, 1974, Plaintiffs CROOKS was accused of misconduct by another inmate. When asked to go to

AMENDED COMPLAINT

segregation, Plaintiff stated that she would do so when she received notice of charges against her. She was forcibly and after the use of grossly excessive force, placed in segregation. She was not served with notice of charges until September 6, 1974 and the Superintendents Proceeding was not held until September 9, 1974.

17. On information and belief, it is a common practice to keep prisoners in solitary confinement under punitive conditions for periods in excess of 72 hours between the time an alleged infraction occurred and the time a Superintendents Proceeding is held.

18. Solitary confinement of prisoners for extended periods of time before a disciplinary hearing is held violates their right not to be deprived of liberty without due process of law.

THIRD CLAIM

19. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1 - 13 and 14 - 18.

20. Plaintiffs and inmates of Bedford Hills who are required to appear before Superintendents Proceedings are not permitted to call witnesses in their own behalf, even when there is no threat to institutional safety or correctional goals. No reason is ever given to inmates when the request for witnesses is refused.

21. Plaintiffs and other inmates at Bedford Hills are denied the right to have a person of their choice assist in their defense at Superintendents Proceedings. Often, the person assigned to render assistance is untrained, does not know the prisoner, has no knowledge of prison disciplinary proceedings and is incompetent to render proper advice to the inmate.

AMENDED COMPLAINT

22. On Sunday, September 1, 1974, Plaintiff CROOKS remained in solitary confinement at Bedford Hills without any charges being preferred against her. Without advance notice to her, her family or her attorney, she was suddenly and surreptitiously spirited away to Fishkill Correctional Facility, where she was again kept locked in her cell 24 hours a day.

23. On or about September 6, 1974, Plaintiff Crooks was served with a Notice of a Superintendents Proceeding. She was denied an adjournment to consult with her attorney and prepare a defense.

24. The Superintendents Proceeding was conducted at Fishkill on September 9, 1974. The alleged charges arose at Bedford Hills, and all the witnesses were confined or employed at Bedford Hills. Consequently, none of the inmate witnesses were able to be interviewed prior to the Proceeding. This lack of investigation severely prejudiced Petitioner's right to a Fair Hearing.

25. On or about Monday, January 13, 1975, Plaintiff Crooks appeared before an Adjustment Committee where she was served with Notice of a Superintendents Proceeding to be held on Thursday, January 16, 1975.

26. At both Superintendents Proceedings conducted against Plaintiff Crooks at Fishkill, she was told that the rights set forth in Wolff v. McDonnell, U.S. 94 S. Ct. 2963 (1974), do not apply to Proceedings at Fishkill.

27. On September 9, 1974, Plaintiff Crooks was not permitted to have counsel or a counsel substitute present, nor was she permitted to call witnesses in her behalf; nor was she permitted to be present when prosecution witnesses were being heard.

28. On January 16, 1975, Plaintiff Crooks was not permitted to have the person of her choice assist her; nor was

AMENDED COMPLAINT

29. Superintendents Proceedings conducted in the manner alleged at Fishkill and Bedford Hills violates prisoners' Fourteenth Amendment right not to be deprived of liberty without due process of law.

FOURTH CLAIM

30. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1-11 and 14-18 and 20-27.

31. All prisoners in Bedford Hills and Fishkill who are segregated from the general population are kept in solitary confinement under punitive conditions. Those prisoners who are segregated for reasons other than punitive ("administrative segregation"), for example, to protect her from other inmates, or to investigate and prepare formal charges, or to protect other inmates, suffer the same rigors and loss of privileges as prisoners who are punitively placed in solitary confinement.

32. Placing prisoners in administrative segregation without affording them the same privileges as the general population consistent with their segregated status violates their right not to be deprived of liberty without due process of law.

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that the Adjustment Committee at Bedford Hills and Fishkill functions in such a manner as to violate the Class' right not to be deprived of liberty without due process of law.

2. Preliminarily and permanently enjoin Defendants, their agents or employees from placing any member of the Class in segregation utilizing an Adjustment Committee Proceeding or Superintendents Proceeding, or any other proceeding whatsoever until and unless prisoner:

(a) Is given written notice of charges 24-hours in advance of a hearing by the Adjustment Committee or its equivalent;

AMENDED COMPLAINT

(b) Is given a hearing before an impartial tribunal;

(c) Is permitted to present witnesses and documentary evidence in her behalf;

(d) Is permitted the assistance of counsel or a counsel substitute of her own choosing; including another inmate;

(e) Is given a written statement of the disposition of the charges, the reasons for the disposition, and the evidence relied on.

3. Preliminarily and permanently enjoin Defendants from placing any prisoner in non-punitive segregation for more than 24-hours after an alleged infraction without giving her written notice of the charges.

4. Preliminarily and permanently enjoin Defendants from placing any prisoner in non-punitive segregation unless the prisoner is found to present a clear present danger to herself, other inmates or correction officers.

5. Preliminarily and permanently enjoin Defendants from placing any prisoner in non-punitive segregation until, and unless the prisoner:

a) Is given notice of the reason she is being placed in segregation;

b) Is given an opportunity to be heard in her behalf;

c) Is given a written statement of the reasons she is being segregated, the evidence relied on, and what standards she must meet to be released from segregation.

AMENDED COMPLAINT

6. Preliminarily and permanently enjoin Defendants from placing any prisoner in non-punitive segregation unless she is accorded all privileges of the general population consistent with segregated status; and,

7. Expunge the records of each member of the Class of all Adjustment Committee Proceedings and Superintendents Proceedings held since June 26, 1974, which do not comply with the provisions of Paragraph 1-6 above;

8. Order such other and further relief as to the Court may seem just and proper.

DONALD GRAJALES, ESQ.
Project Director
BRONX LEGAL SERVICES, CORP.C.
579 Courtlandt Avenue
Bronx, New York 10451
By: STEPHEN M. LATIMER, Of Counsel
Attorneys for Plaintiffs

disturbance, and from the looks of it I was deeply involved.

Q Did they ask you any questions about the disturbance?

A Yes, she asked me why was I involved in the disturbance and I said, because I seen Miss Waterman and Captain Coffey bring five men up to jump on another woman; Carol Crooks.

Q What was their response to that, if you remember?

A I really don't recall.

Q Did you see the Adjustment Committee another time after that?

A I was seeing -- I must have seen the Adjustment Committee something like nine times, and then one night I requested to see Miss Clements, and she let me see her, and I talked to Miss Clements and I told her that, being that she was the Deputy Superintendent of Security, and because of the disturbance technically speaking the security of the institution was supposedly threatened, it would be impossible for her to render a fair and impartial verdict against me, and I told her, also told her that I was aware that the charges and my time had already been drawn up.

Q Was this after you had received any of the Superintendent's proceeding?

A No, this was before. She was coming over every day

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Q What were you afraid of?

A I was afraid that I would be getting criminal charges or something like that brought against me and I knew already that Miss Clements was already prejudiced as far as we were concerned.

Q Had you any any prior dealings with Miss Clements?

A No.

Q But she was a director of security?

A Right, that's her function in the institution is security.

MR. LATIMER: I would like to continue with the direct after lunch.

THE COURT: All right, we will adjourn at this point until 2:15. Recess until 2:15.

MR. LATIMER: Is it possible to bring sandwiches back down to the women in the bullpen?

THE COURT: I have spoken to the marshal and he has arranged for lunch.

(Luncheon recess.)

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Gatling-cross

126

Q How did you find that out?

A Her name was on my papers.

Q And you felt that you couldn't get a fair hearing before her?

A Impossible. It would have been impossible.

Q That is the way you felt?

A Yes.

Q Would you have been willing to attend a hearing before some other officer?

A Someone that was not affiliated with security at the institution.

Q You would be willing to tell your story?

A Would I be willing to tell my story?

Q Yes.

A My explanation as to why I was involved?

Q Yes.

A Yes.

Q Tell us then if you were willing to tell your story, why you are telling us now that you are afraid to talk because of possible criminal involvement.

THE COURT: I will not permit that question.

MR. SATTLE: Has your Honor excluded the question?

THE COURT: Yes.

Q Were you afraid to become criminally involved if

1 THE COURT: There was a stenographer there or
2 somebody there making a record of the hearing?

3 THE WITNESS: I think it was a secretary.

4 THE COURT: Her secretary?

5 THE WITNESS: Yes.

6 THE COURT: Were you asked to sign anything after
7 the hearing?

8 THE WITNESS: Yes.

9 THE COURT: Did you read it over before you signed
10 it?

11 THE WITNESS: Yes; because me and my parole officer
12 talked about it. We went out in the hallway.

13 Q Were you given an opportunity to explain your side
14 of the story at the Superintendent's proceeding?

15 A Sometimes. Lots of things she didn't want to hear.

16 Q What was the disposition? What was the result of
17 the Superintendent's proceeding?

18 A She gave me sixty days in the segregation, and the
19 first time she took two years good time away.

20 Q The first time. Was there a second time?

21 A Yes, she called me back in and had me give her the
22 papers back, and she took some of the charges off of it.
23 Then she told me, "No, that will be only a year of good time
24 taken away."
25

1 Q Do you know whether Lieutenant Clements, Mrs.
2
3 Clements had formed any opinion of you or your behavior before
4 the Superintendent's proceeding?

5 A Yes, I believe so.

6 Q What facts led to your belief that she had formed
7 such an opinion?

8 THE COURT: Mr. Sattler, are you just --

9 MR. SATTLER: I am hesitating whether or not to
10 object to this. It is totally in my opinion irrelevant,
11 particularly the nature of these questions are objectionable
12 as to form, and asking for an opinion of the witness as to
13 somebody else's frame of mind.

14 THE COURT: Yes, I think it is getting a little
15 remote, Mr. Latimer. What is your intention? What do you
16 have to say about this?

17 MR. LATIMER: Again, in this particular case, I am
18 trying to show a bias or prejudice by the officer. She is
19 entitled to a Superintendent's proceeding at least before an
20 impartial tribunal, and I am trying to show that Lieutenant
21 Clements was not impartial because of past activities between
22 Lieutenant Clements and the witness.

23 MR. SATTLER: Your Honor, it presumes in an
24 institution wherever one is a convicted felon and where we
25 do know that they have histories of all sorts of improper

activities of a disciplinary nature in the institution, that anybody who deals with them at any time ipso facto becomes prejudiced, when the function of the people who are there are to presumably keep these people confined and keep them -- try to encourage them in various ways to come out a better person than when they came in.

THE COURT: I do not think that follows, Mr. Sattler; any more than I think it follows that because Miss McDaniel has been convicted of a crime that she is not telling the truth.

Go ahead, Mr. Latimer.

MR. LATIMER: I would cite the Court to Crooks v. Warne, the slip opinion page 22 for authority of this line of questioning that she is entitled to an impartial tribunal.

MR. SATTLER: Nobody says anything about that. That is not what we are talking about.

THE COURT: No, go ahead, Mr. Latimer.

Q Can you tell us what facts led you to believe that Miss Clements could not give you an impartial Superintendent's proceeding?

MR. SATTLER: I object to the form of the question.

THE COURT: Overruled.

Q Go ahead.

A Oh, it was in '73, I really can't remember the

month, it had to be -- I'm not for sure about the month exactly but Mrs. Clements had wrote me a charge sheet, and when they called me to her Adjustment Clinic she was sitting on Adjustment Clinic and she gave me five days in segregation.

Q What did she say to you during the course of that Adjustment Clinic?

A She told me what my charge was and everything, and she asked me to step out the room, and then she called me back in the room, and she told me I would be locked five days in West Wing.

Q Had you had any other dealings with her?

A Oh, yes, on several occasions since the incident.

Q No, I am talking about before the Superintendent's proceeding.

A Oh, no, that was the first time. That's the first time I met her. I didn't know who she was. You know, like--

Q Do you know --

A Could I explain because I --

Q Okay, explain.

A Because when I was locked in the segregation down there, in West Wing, the woman next door to me told me that was the Superintendent's hearing because Miss Clements was on it. That was not Adjustment Clinic. I didn't know, you

1 mbrm

McDaniel-direct

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2 you. I didn't know -- that was the first time I seen Miss
3 Clements myself so I didn't know if it was Adjustment
4 Committee or Superintendent's hearing. All I know I got
5 locked for five days.

6 Q Did she say anything to you that would indicate a
7 like or dislike of you at that time?

8 A No. She just locked me for five days.

9 Q Were you also, after the Superintendent's pro-
10 ceeding on September 23, referred back to the Adjustment
11 Committee?

12 A Yes.

13 Q Did you again see the Adjustment Committee?

14 A Yes.

15 Q When?

16 A I seen them around -- every seven days, every
17 six days.

18 Q This is after you had your Superintendent's
19 proceeding?

20 A Yes.

21 Q You told us you were given sixty days in segrega-
22 tion and referred back to the Adjustment Committee; is that
23 correct?

24 A Yes, I was.

25 Q When were you supposed to get out of segregation?

Testimony of Clement

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ELIZABETH POWELL, et al.,

vs.

74 Civ. 4628

PETER PREISER, et al.

December 16, 1974

(Trial resumed.)

(Present: All counsel.)

FRANCES CLEMENT, called as a witness by
the plaintiffs, being first duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. SATTLER:

Q Miss Clement, will you tell us what position you
occupy in the State Department of Corrections?

A I am a deputy superintendent for security services.

Q Where do you work?

A At the Bedford Hills Correctional Facility.

Q How long have you been there?

A (No response.)

Q How long have you been there?

A Since 1959.

Q And how long have you been deputy superintendent?

A For four years; since 1970.

Q What other positions did you occupy prior to this

eb1m-2 Clement-direct

present time?

A From correction officer through the ranks, sergeant, lieutenant, assistant deputy to the present position of deputy superintendent.

Q Now, as deputy superintendent, what are your duties and responsibilities?

A In essence, my duties are the safety and security of the facility.

Q We have had a lot of talk here about superintendent's proceedings. Are you familiar with those?

A Yes, I am.

Q Will you tell us in Bedford Hills, who presides at those hearings?

A Well, the superintendent may direct that a deputy superintendent or any other employee that she sees fit or has some other reason to designate some other employee.

Q Have you conducted such proceedings?

A Yes, I have.

Q For how long?

A Well, I would say since -- for at least two to three years.

Q And are these proceedings conducted to any rules or regulations of the department?

A Yes. The superintendent's proceedings are conducted

1 eblm-3

Clement-direct

2 according to the departmental regulations.

3 Q Specifically what? Chapters V and VI?

4 A Chapters V and VI.

5 Q Do you remember an event that occurred at Bedford
6 on August 29, 1974?

7 A Yes, I do. We had a serious disturbance there.

8 Q Where were you on that day?

9 A I was on vacation at the time.

10 Q When you say you were on vacation, you mean you
11 were away from the institution?

12 A I was away from the facility at that time.

13 Q When did you return?

14 A September 1st, 1974.

15 Q That was two or three days later?

16 A Yes.

17 Q When was the first time that you heard about the
18 serious disturbance?

19 A September 1st.

20 Q Did you learn at any time how many people were
21 involved in that disturbance; that is, how many inmates were
22 involved?

23 A Well, I had 43 superintendent's proceedings. There
24 were -- the original number was 54. I had 43 superintendent's
25 proceedings.

1 eblm-4

Clement-direct

2 Q When was your first superintendent's proceedings?

3 A I believe it was September 11th.

4 Q Were there some of the numbers that you mentioned
5 who were not given superintendent's hearings and were treated
6 otherwise?

7 A I didn't hear your question.

8 Q Did some of the group of 43 or 53 -- whatever
9 number you mentioned -- were some of those treated other
10 than by a superintendent's hearing?

11 A Some were treated through the Adjustment Committee.

12 Q Now, can you tell us why the first superintendent's
13 hearing was held on September 11th when the events that were
14 the subject matter of the hearing occurred on August 29th?

15 A Yes.

16 MR. LATIMER: Objection, your Honor. Unless
17 there is some basis to show how she might have such knowledge,
18 if she does. She was assigned to conduct superintendent's
19 proceedings.

20 MR. SATTLER: I never heard of an objection of
21 that nature, your Honor. The complaint here is that there
22 was a delay in the processing of the hearings.

23 THE COURT: Mr. Latimer's point is that: How
24 does Miss Clement know that the first one was conducted on
25 September 11th. I suppose, Mr. Latimer, you are technically

1 correct. He should have found out when the first superin-
2 tendent's hearing was held, and how Miss Clement knows.

3 Was the first one held on September 11th?

4 THE WITNESS: To my knowledge, I held the first
5 superintendent's proceeding on September 11th.

6 THE COURT: I think, Miss Clement, Mr. Latimer,
7 is in a position to know about this. She is the deputy
8 superintendent. Overruled.

9 Q Tell us why the first hearing occurred on September
10 11th in view of the fact that the incident that was the
11 subject matter of the hearing took place on August 29th.

12 A Well, I returned to the facility September 1st.
13 These were extraordinary circumstances.

14 Q Had it ever occurred before, to your knowledge?

15 A Not of that nature; not of that magnitude.

16 Q Go ahead.

17 A These were extraordinary circumstances. The
18 investigations were extensive and we proceeded just as
19 quickly as we could under the circumstances.

20 Q Now, the testimony here has been that one of the
21 last hearings took place towards the end of September. Can
22 you tell us why it took from September 11th to the end of
23 September to conduct the 43 hearings that you said you had?

24 A Well, as I mentioned before, the investigations
25

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Clement-direct

1 were extensive; the investigations continued up until the
2 last superintendent's proceeding. Some of the people who
3 were designated to furnish assistance to the women, asked
4 for more time in order to get their investigations together,
5 and this was the reason for the delay.
6

7 Q Now, what is the maximum punishment that you, as
8 a conductor of the superintendent's hearing, can impose?
9 What is the most you can do?

10 A Confinement, 60 days.

11 Q In most of these cases, did you impose a 60-day
12 confinement?

13 A No, I did not.

14 Q Tell us what you did and how you broke it down?

15 A Well, the disposition varied from 20 days to 60
16 days; also accompanied with that was loss of good behavior
17 allowance, and that ranged from one month to twelve months.
18 But good behavior allowance, one month meant ten days. One
19 month was equal to ten days of loss for good behavior
20 allowance.

21 THE COURT: I don't understand that.

22 THE WITNESS: On the --

23 THE COURT: Explain it for me again.

24 THE WITNESS: The loss of good behavior allowance.
25 During the superintendent's proceedings, I told the women

eblm-7

Clement-direct

1 that those who lost good behavior, that they lost one month.
2
3 In essence, I meant ten days. I told them this verbally
4 and later I sent them amended dispositions saying that one
5 month was equal to ten days loss of good behavior allowance.

6 THE COURT: Does that mean, if they got 12 months,
7 they lost 120 days?

8 THE WITNESS: 120 days.

9 THE COURT: You said the range of confinement was
10 from 15 days.

11 THE WITNESS: Twenty, thirty -- up to sixty days.

12 BY MR. SATTLER:

13 Q Now, Miss Clement, can you recall what positions,
14 in terms of numbers, what positions these individual inmates
15 took with respect to the 43 superintendent's proceedings
16 that you conducted?

17 A Most of the women admitted at least one or more
18 of the charges.

19 Q If I suggest to you that 38 of them were in that
20 category, would that coincide with your recollection?

21 A That would seem to be correct.

22 Q The other five: What is the disposition?

23 A Some admitted variations of the charges.

24 Q If I suggest to you that two admitted variations
25 of the charges, would that coincide?

1 eblm-8

Clement-direct

2 A That would be correct.

3 Q With respect to the other three?

4 A One woman did not attend the proceedings and one
5 woman said she preferred to remain silent.

6 Q And the last one?

7 A (No response.)

8 Q Was there one who denied all the charges?

9 A One denied all the charges.

10 Q So, to sum it up: 38 admitted one or more of the
11 charges, two admitted a variation of the charges, one
12 refused to attend the proceeding, one remained silent and
13 one denied the charges?

14 A That's correct.

15 Q So, in effect, there was a contest, so to speak,
16 with respect to one inmate, is that right, the one who
17 denied the charges?18 MR. LATIMER: Objection, your Honor. That has
19 got to be the most leading question I heard yet.

20 THE COURT: I am sorry.

21 MR. LATIMER: I object to that question as leading.

22 THE COURT: I will allow it. It means something
23 to me.

24 (Question read.)

25 A A contest?

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Clement-direct

Q Yes.

A Yes.

THE COURT: I suppose, Mr. Latimer, your point is that there might have been a contest in one sense of the word, with respect to all of the inmates, since I take it that at least some, if not most of them, admitted only one or some of the charges and denied others; so in that sense I suppose there was a contest as to everybody.

MR. LATIMER: That is exactly correct, your Honor.

THE COURT: I take it that what Mr. Sattler was asking, however, was that there was only one inmate who denied everything, and I take his question to mean that and the answer to indicate that. Obviously, there could be individual contest of greater or lesser extents with everybody.

MR. SATTLER: If your Honor please, I don't want to quarrel but it seems too trivial. I suggest to your Honor in anyways, in a criminal case, if a defendant pleads guilty to one count of an indictment and the others are dismissed or otherwise disposed of, I don't think anybody, in terms of lawyers, think that that's a contest.

THE COURT: Well, I think we could go on debating what contest means for quite a long time. I suppose when a woman pleads guilty to one charge and the others are

1 eblm-10

Clement-direct

2 dismissed, it may be because a contest did exist with res-
3 ~~pect~~ to the other charges but the prosecutor just decided
4 to drop them.

5 I think I understand both of your points.

6 MR. SATTLER: All right.

7 Q With respect to the imposition of the time imposed
8 by you in each individual case of confinement, was the
9 period of time -- how was the period of time calculated?

10 A Well, it was calculated on the basis of the
11 evidence and on the basis of the level of involvement of
12 each one.

13 Q No, I don't mean that. I mean, when did the
14 period -- if you give an inmate, let's say, 30 days in one
15 of these situations, and the inmate -- the hearing was held
16 on a given date but the inmate had already been put into
17 confinement on August 29th or August 30th, when did the
18 time begin to run?

19 A From the time she first entered confinement.

20 MR. SATTLER: I have no further questions.

21 BY THE COURT:

22 Q Exactly what does "loss of good behavior" mean?
23 Is that what you call it? What does that mean? Does that
24 mean that in your particular situation, if you said 30 days,
25 it wound up only being ten days? What does the ten days

1 eblm-11

Clement-direct

2 BY THE COURT:

3 relate to?

4 A Well, for the women confined to that facility,
5 they may earn ten days off their sentence; ten days per month.

6 Q Is this related to parole?

7 A No. It's related to conditional release. They
8 may earn ten days each month for their cooperation and
9 participation.

10 Q So, if you impose loss of good behavior for 30
11 days, it means that the ten days that it will earn for a
12 particular month were gone?

13 A Exactly.

14 BY MR. SATTLER:

15 Q Let us follow that up a little bit. Your decision
16 is not a final decision, is it, with respect to loss of good
17 time?

18 A Exactly. This was explained to the women at the
19 time in the superintendent's proceedings, that if they
20 cooperated and if their conduct within the facility improved,
21 and if the Time Allowance Committee thought that their con-
22 duct and participation in programs warranted the return of
23 any part or all of that good time that was taken as a result
24 of the superintendent's proceeding, that the Time Allowance
25 Committee would return all or any part of the good time that

1 eblm-13

Clement-direct/cross

2 Committee is concerned?

3 Q Yes.

4 A Well, generally, when the committee considers the
5 entire institutional activity of the resident, they view her
6 adjustment so far as the programs are concerned, their parti-
7 cipation in programs and cooperation with the order of the
8 facility, and they have returned good time.

9 MR. SATTLER: Thank you.

10 CROSS-EXAMINATION

11 BY MR. LATIMER:

12 Q Miss Clement, without consulting your department's
13 records, you wouldn't know in how many cases that has hap-
14 pened, would you?

15 A I would have to consult the records.

16 Q And do you now serve as a chairman --

17 THE COURT: I beg your pardon. I didn't think
18 Women's Lib had gone to the extent that Miss Clement should
19 be addressed as "sir."

20 MR. LATIMER: I'm sorry.

21 MR. SATTLER: Your Honor, I have difficulty hearing
22 Mr. Latimer since he's right in front of me. Is there some
23 way we can solve this?

24 THE COURT: You could move your chair up.

25 Q Now, Miss Clement, are you now chairwoman of the

1 eblm-12

Clement-direct

2 was taken.

3 Q And that's provided for both by the rules and
4 regulations and also by the Correction Law of the State of
5 New York, is that right?

6 A That's correct.

7 BY THE COURT:

8 Q Did that happen in any of the cases in which you
9 provided for loss of good behavior time?

10 A Some of the women are just now coming before the
11 Time Allowance Committee. I don't have any case yet.

12 Q Who is on the Time Allowance Committee?

13 A (No response.)

14 Q I don't mean by name, but --

15 A There will be a deputy, or some other employee,
16 the head of industry, the director of education, and the
17 principal clerk of the facility.

18 BY MR. SATTler:

19 Q For the benefit of all of us, can you tell us in
20 your experience, give us a general idea of what has occurred
21 in the past with respect to the return of good time, where
22 it was taken away either in a superintendent's hearing or
23 otherwise? Tell us more or less what you know about what
24 has occurred generally at Bedford.

25 A Well, generally, so far as the Time Allowance

1 eblm-14 Clement-cross

2 Time Allowance Committee at Bedford?

3 A Yes, I am, except for cases that I have handled
4 in superintendent's proceedings. If I have been involved at
5 all, then I am disqualified and the superintendent directs
6 that another chairperson take over.

7 Q Did you review the loss of good time of Marsha
8 Padilla?

9 A No, I did not.

10 Q Now, when you conducted the superintendent's pro-
11 ceedings, you testified that you made a determination on the
12 basis of the evidence and the level of involvement, is that
13 correct?

14 A Yes.

15 Q Did you have before you the Adjustment Committee's
16 reports, if any, that were made in each of these cases?

17 A I had the results of the investigation.

18 Q Did you have before you any information from the
19 prison's records and files concerning the past record within
20 the institution of the women as Chapters V and VI permit?

21 A I had in my possession at the time the reports
22 that were collected so far as the investigation was concerned.

23 Q Now, did any of this information that you had
24 before you have reference to the inmates' conduct, attitudes,
25 et cetera, before August 29th?

1 eb1m-15 Clement-cross

2 A Not to my knowledge. What I had, dealt with the
3 disturbance.

4 Q Now, you are deputy superintendent at Bedford,
5 and you have been since 1970?

6 A 1970.

7 Q 1970. I'm sorry.

8 Can you tell us specifically what your duties
9 involve?

10 A Well, I am the supervisor of the security force.
11 That deals with the correction officers and the sergeants,
12 lieutenants, captains, assistant deputies and on up to my
13 rank.

14 I am responsible for the order of the facility and
15 the safety of the facility.

16 Q Are you responsible for perimeter security?

17 A Yes, safety officers are under my supervision.

18 Q Can you tell us what "perimeter security" is?

19 A It means the fence.

20 Q Are you responsible for the internal security of
21 the prison?

22 A I'm responsible for the internal security.

23 Q Can you tell us a little bit about what that
24 responsibility entails?

25 A Well, it entails the entrance of contraband. It

1 eblm-16

Clement-cross

2 entails the -- well, it entails the security so far as the
3 buildings and the facility is concerned.

4 Q Would it entail dealing with a minor disturbance
5 within the facility?

6 A Yes, any disturbance.

7 Q It would entail dealing with any disturbance
8 within the facility?

9 A Yes.

10 Q And that's part of your job description?

11 A Well, that's every employee's.

12 Q But yourself specifically as deputy in charge of
13 security?

14 A Yes, I would say so.

15 Q And it would be--if you were unable to deal suc-
16 cessfully with a disturbance, would it reflect adversely on
17 your record?

18 MR. SATTLER: I object.

19 (Question read.)

20 THE COURT: Sustained.

21 Q Is it then in your professional interest to see to
22 it that no disturbances happen within the institution?

23 A I would say --

24 MR. SATTLER: Whose interest would it be to have
25 it happen?

1 eblm-17

Clement-cross

2 THE COURT: It is her job, isn't it, to try to
3 avoid disturbances?

4 MR. SATTLER: It is not an amusement park we are
5 dealing with.

6 MR. LATIMER: This is an official at the institu-
7 tion who is charged with the very security of the institution
8 and she then conducted proceedings -- disciplinary proceed-
9 ings against --

10 THE COURT: I would think, Mr. Latimer, that since
11 it is her job to maintain security and safety, if there is
12 no security or no safety, the consequences would be fairly
13 predictable.

14 MR. LATIMER: No. I would suggest then that she
15 was not the person to conduct the superintendent's proceed-
16 ings stemming from a threat to the security of the institu-
17 tion.

18 THE COURT: I understand what you are getting at.

19 Q You returned to the campus on --

20 THE COURT: I think there may be a difference, and
21 this is perhaps something we should leave for discussion to
22 another time, but I think there is a difference administra-
23 tively in the two areas of interest that you are raising:

24 One, the maintenance of security; and the second
25 point, the conduct of proceedings for a violation of security.

1 eblm-13

Clement-cross

2 I think it is a question that deserves considera-
3 tion. I don't think it is something that we can learn from
4 this witness. I think it is a question of the need to dis-
5 cuss it.

6 MR. LATIMER: Then I will reserve that point.

7 THE COURT: I think we can assume that Miss Clement
8 knows we know that she was charged with the security. We
9 know that she was charged with conducting superintendent's
10 proceedings which dealt with alleged violations of security.
11 The consequences of her conducting those two roles are some-
12 thing, it seems to me, which the lawyers ought to discuss.

13 I take it that there is no rule that the deputy
14 superintendent in charge of security can not sit at super-
15 intendent proceedings. Is there such a rule?

16 MR. LATIMER: Not to my knowledge, your Honor, but
17 where the superintendent's proceeding involves charges that
18 conceivably involve a threat to the security of the institu-
19 tion, I would hardly think that she could be impartial; that
20 perhaps another deputy superintendent should have been the
21 one assigned, or another officer should have been the one
22 assigned to conduct those particular proceedings.

23 THE COURT: Is there more than one deputy superin-
24 tendent?

25 THE WITNESS: Yes. There are three deputies.

1 eblm-19

Clement-cross

2 THE COURT: What do the other two do?

3 THE WITNESS: One was a deputy of administration
4 and one was a deputy of programs.

5 MR. SATTLER: If your Honor wants to go into a
6 discussion on this subject, I would be very happy to engage
7 in it. I can't see the point to it. And it seems to me that
8 we are dealing with a woman's prison; we are dealing with a
9 correctional facility. Everybody there deals with security,
10 with the care and handling of inmates.

11 THE COURT: That is one question that I was about
12 to suggest: The question of security being something that
13 must be important to everybody both on the staff and the
14 residents.

15 MR. SATTLER: Why shouldn't one be as much object-
16 ive as another and honest about it. We have instances--if
17 you want us to bring the records down, we can bring all the
18 evidence you want down.

19 THE COURT: Of course there are other possibilities
20 which are not difficult to think of who might conduct super-
21 intendent's proceedings. I guess another question here is,
22 or at least another aspect of this is: That, of course, we
23 are dealing with problems relating to women who are prisoners,
24 but they are also human beings.

25 Let's go ahead and leave this for another time. It

1 eblm-20 Clement-cross

2 does seem to me though, Mr. Latimer, the consequences of
3 her sitting on a superintendent's proceeding -- presiding at
4 a superintendent's proceeding while she is in charge of
5 security raises legal questions which she can't help us with.

6 MR. LATIMER: Well, I would then say --

7 THE COURT: If you have got any more questions
8 that you think you ought to ask in this area, why go ahead.

9 MR. LATIMER: I would save that particular area
10 for further discovery proceedings if I deem that necessary
11 and for legal argument to it then.

12 THE COURT: Well, if you mean discovery of Miss
13 Clement, let's not defer it. Let's do it right now.

14 MR. LATIMER: No, I mean discovery of institutional
15 records, other people in the institution.

16 BY MR. LATIMER:

17 Q Now, you testified that you were on vacation up
18 to or through August 31st, I would guess, and you returned
19 to the institution on September 1st?

20 A That's correct.

21 Q And on September 1st, you were told of the dis-
22 turbance on the night of the 29th, is that correct?

23 A That's correct.

24 Q Were you assigned any specific duties with respect
25 to that disturbance when you returned on September 1st?

1 eblm-21

Clement-cross

2 A I was told that I would conduct the superintendent's
3 proceedings.

4 Q And were you told that there were investigations
5 continuing; there were investigations of those incidents?

6 A Yes.

7 Q Were you given any responsibility in those inves-
8 tigations?

9 A No. There was a person who did the -- who coordin-
10 ated the investigations.

11 Q Did you take any part in any of the investigations
12 of the 54 women?

13 A Only during the superintendent's proceedings and
14 in considering the evidence.

15 Q Now, were you told, prior to the time that you
16 conducted the superintendent's proceedings, who the people
17 involved -- alleged to have been involved in the disturbance
18 were?

19 A When they were referred from the Adjustment Com-
20 mittee to superintendent's proceedings.

21 Q Now, you testified that originally there were 54
22 people involved, is that right?

23 A Yes.

24 Q Were you told all of their names?

25 A Yes. The Adjustment Committee handed in their

1 eblm-22

Clement-cross

2 names.

3 Q And you know the names of all of those people?

4 A I knew the names of the people who would be referred
5 for superintendent's proceedings.

6 Q But you knew that there were 54 people involved?

7 A Yes.

8 Q And you just testified a minute ago that you knew
9 54 names?

10 A I knew that there were 54 people involved. The
11 Adjustment Committee referred the names who would be referred
12 for superintendent's proceedings and, yes, and I did know
13 that the other women would not be referred for superintendent's
14 proceedings.

15 Q How did you know that the other women would not be
16 referred for superintendent's proceedings?

17 A Well, through the superintendent.

18 Q Mrs. Warne had discussed it with you?

19 A She discussed that I would hold the superintendent's
20 proceedings and she discussed -- she told me the names that
21 she was directing -- the names of the women that she was
22 directing for the superintendent's proceedings to be held.

23 Q Did she have any other discussion with you?

24 A No.

25 Q Did she have any discussions with you about the

1 eblm-23 Clement-cross

2 incident between August 29th and the date the last superin-
3 tendent's proceeding was held?

4 A No.

5 Q None whatsoever?

6 A No, she only told me that I would conduct the
7 superintendent's proceedings and she forwarded the names of
8 the people that she was directing that the superintendent's
9 proceedings be held for.

10 Q But she told you that there were 11 people who had
11 been involved in the incident who weren't going to be
12 referred to the superintendent's proceedings?

13 MR. SATTLER: I object. We are getting into an
14 argumentative situation now and it is perfectly pointless.

15 MR. LATIMER: I don't think it is pointless at all.

16 MR. SATTLER: Well, I do, and that's why I am
17 objecting.

18 THE COURT: I think I will allow it.

19 (Question read.)

20 Q Is that correct?

21 A That's correct.

22 Q Did you conduct a superintendent's proceeding for
23 Ernestine Davis?

24 A Yes, I did.

25 Q Do you remember that particular proceeding?

eblm-24

Clement-cross

1
2 A I remember parts of it. I probably would have to
3 refer to the record.

4 Q Do you remember asking her if she would admit the
5 charges?

6 A After -- during the superintendent's proceeding,
7 we tell the women, in essence, that whatever they say, or
8 statements they make, cannot be used against them in any
9 criminal action.

10 After that, we go over each of the charges and
11 then, yes, I do ask the women: Do they admit or deny the
12 charges.

13 Q And did you tell Ernestine Davis that it didn't
14 make any sense for her to deny the charges?

15 A No, I did not. Absolutely not.

16 Q Do you remember whether any of these charges --
17 where two of the women received the exact same charges?

18 A I would have -- if you want to speak specifically,
19 I would have to refer to the records.

20 Q You assigned Mrs. Morris to conduct certain -- to
21 assist the inmate in certain of these superintendent's pro-
22 ceedings, is that correct?

23 A Yes.

24 THE COURT: Mrs. Who?

25 MR. LATIMER: Morris.

eblm-25

Clement-cross

Q And who is Mrs. Morris?

A Mrs. Morris is a correction counsellor.

Q Is she commonly known in the institution as a parole officer?

A No, she is not. She is a counsellor.

Q And did you have a conversation with Mrs. Morris between the time that she was assigned to assist you women and the time the superintendent's proceeding was held?

A Before the superintendent's proceeding is held, the person who is designated to furnish assistance will give to the person conducting the proceeding, the results of their investigation. Whatever factual claims that the women have, they investigate those claims and they give the hearing officer the results of those investigations prior to the superintendent's proceeding.

Q And do you give the person assigned to conduct the superintendent's proceeding any similar reports of the evidence against the inmate?

A Do I give the person -- oh, yes, they have the formal charge. The woman is given the formal charge, and -- are you saying: Do I -- did I do what?

Q Did you give Mrs. Morris, or anybody else assigned to assist the women at the superintendent's proceedings, the witnesses' statements and written reports; not the formal

eblm-26

Clement-cross

1 charge but other written reports or statements by the
2 guards, that you were relying on in evidence against the
3 women at the superintendent's proceeding?
4

5 A As a basis for her investigation? In some cases,
6 I believe I did.

7 Q Did you have a conversation -- you had a conversa-
8 tion with Mrs. Morris, is that right?

9 A Yes, I had a conversation with Mrs. Morris.

10 Q Did Mrs. Morris, during the course of that conver-
11 sation, express any reluctance to assist the women she was
12 assigned to assist?

13 A She told me that the women did not want her to
14 assist.

15 Q And did she tell you that she was reluctant to
16 assist them because of that?

17 A No, I don't know of any reluctance.

18 Q Did she tell you that she didn't know the women
19 because they weren't the women who were regularly assigned
20 to her and that's why she couldn't assist them?

21 A She said that the women were not assigned to her,
22 but she said that the women were not assigned to her.

23 Q Okay. Now, you knew that there were a lot of
24 women involved in this disturbance, is that right?

25 A The numbers that I mentioned.

1 eblm-27

Clement-cross

2 Q And you knew in fact that there was a disturbance
3 on the 29th?

4 A Well, yes.

5 Q These charges were multiplicitious, to say the
6 least; that is, there were a lot of charges against most of
7 the women, weren't there?

8 A The charges varied in number.

9 Q And they were up to ten or eleven charges?

10 A I would say so.

11 Q Wasn't it a logical assumption that these women
12 had done something to merit the charges?

13 MR. SATTLER: I object to that question. It is
14 not a logical assumption at all.

15 THE COURT: I'm not quite sure of the point of
16 your question, Mr. Latimer. Are you contending that because
17 the charges were brought, they were true?

18 MR. LATIMER: I am trying to determine whether
19 the witness -- whether that is what the witness thought; yes.

20 THE COURT: All right. You may answer the ques-
21 tion.

22 (Question read.)

23 A I didn't know. I had to rely on the evidence.

24 Q Now, how many superintendent's proceedings had
25 you conducted before August 29th?

ebim-23

Clement-cross

A I would have to go to the record. I could only approximate --

THE COURT: Give us your best approximation. A hundred? Ten? Fifty?

THE WITNESS: It might go up to -- I don't believe it is even a hundred. I would say, including the 43, it might --

THE COURT: Before the 43.

THE WITNESS: Before the 43?

THE COURT: Yes.

THE WITNESS: Fifty or less. I would really prefer to go to the record.

Q And how many of those resulted in a dismissal of the charges?

A Some did result in a dismissal of some of the charges.

Q How many resulted in a dismissal of all the charges?

A Well, in some cases there was only one charge and I would have to go through the record for that.

Q But most of them resulted in the woman serving some time in segregation or special housing, however you preferred it; isn't that so?

MR. SATTLE: I object.

Order & Opinion of April 9, 1975
denying Carol Crooks' Motion
for a Preliminary Injunction

no Decision

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ELIZABETH POWELL, et al.,

Plaintiffs,

: 74 Civ. 4628

-against-

BENJAMIN WARD, et al.,

Defendants.
----- x

#42221

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S.D.N.Y.

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

Plaintiff Carol Crooks, an inmate at the Fishkill Correctional facility, has moved for a preliminary injunction to enjoin the imposition of 45 and 35-day penalties of segregation following Superintendent's Proceedings ^{1/} on January 16 and March 5, 1975. This motion is an offshoot of the principal proceeding in this class action challenging the constitutionality of the disciplinary procedures followed at the women's correctional facilities at Fishkill and Bedford Hills. ^{2/}

A related motion has been filed by the defendants to

1/ Superintendent's Proceedings are disciplinary hearings which may result in penalties of punitive segregation, following the filing of formal charges against an inmate. 7 N.Y.C.R.R. §253.

2/ A preliminary injunction motion in the principal proceeding is still pending. This court has been able to dispose of the instant motions on the basis of initial and supplemental affidavits presented by, inter alia, Carol Crooks and Superintendent's Proceeding hearing examiner Carmen Piacente.

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vacate a temporary restraining order entered by Judge Frankel on February 5, 1975, enjoining the imposition of the 45-day segregation penalty imposed at the January Superintendent's Proceeding.

Crooks alleges various violations of her constitutional rights in the conduct of the proceedings, principally involving the conformity of her hearing with the due process standards established by the Supreme Court in Wolff v. McDonnell, 94 S.Ct. 2963 (1974). Crooks maintains that she was given improper notice and inadequate opportunity to present witnesses in her behalf, and that her right to counsel was abridged.

The granting of injunctive relief is appropriate when the plaintiff is suffering possible irreparable harm, and there is a clear showing of probable success on the merits. Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2d Cir. 1969). Since we find that Crooks has not made a clear showing of probable success on the merits in the ultimate action, we deny her request for preliminary injunctive relief, and we vacate the temporary restraining order entered by Judge Frankel on February 5.

Crooks originally maintained that she was not given advance written notice of the formal charges against her at the January Superintendent's Proceeding, as required by Wolff v. McDonnell. 94 S. Ct. at 2979. This contention is without

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merit, since Crooks herself has conceded in a subsequent affidavit that she received advance written notice of the formal charges against her prior to both the January and March Superintendent's Proceedings.

Crooks also contends that she was not permitted to present witnesses in her behalf, even though there was no threat to institutional safety or correctional goals. The Wolff court stated that "the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense, when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." Wolff v. McDonnell, supra at 2979. The Court added, however, that:

Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the Committee to state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases. Any less flexible rule appears untenable as a constitutional matter..."

94 S. Ct. at 2980. It is clear from the transcripts of the two Superintendent's Proceedings that Crooks was allowed to call witnesses on her behalf, but that she could not be present to question them. In the first proceeding, she elected to call

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one witness on her behalf, and in the second proceeding, declined to call any witnesses on her behalf, because she personally wished to examine her own witnesses. Thus, it is clear that the Wolff standards have been met, since Crooks was allowed to call witnesses in her defense. Nothing in Wolff intimates that inmates facing disciplinary proceedings are entitled to be present to question their own witnesses. Moreover, any appearance of unfairness at Crooks' hearings may be attributable principally to Crooks' election not to call witnesses in her defense. In addition, although Carmen Piacente, the hearing officer at the Superintendent's Proceedings, has indicated that he has never failed to call or interview a witness desired by Crooks or any other inmate because doing so might jeopardize institutional safety or correctional goals, he also has stated that "[w]ith respect to Carol Crooks, the problems of potential disruption in a face to face confrontation are extraordinarily likely since this particular inmate has a long history of violent resistance to any institutional system of maintaining order."^{3/} Piacente Affidavit, at 3.

Crooks additionally contends that she was not allowed

^{3/} Piacente pointed out in his affidavit that Crooks has been convicted in the County Court of Westchester County for six counts of assault upon four corrections officers while an inmate at Bedford Hills Correctional Facility, for which she is serving a sentence of two to four years.

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to confront her accusers. During both Superintendent's Proceedings, Crooks was excused from the proceedings when her accusers were presenting evidence against her. That Crooks was not allowed to confront her accusers, however, is not a violation of her right to due process. Confrontation and cross-examination are not constitutionally required in the prison context because of potential hazards to institutional interests. Wolff v. McDonnell, supra, at 2980.

Crooks makes two contentions involving her right to counsel. First, she alleges that she was not permitted a counsel substitute of her choice to assist her at the hearing. Second, she maintains that she was denied the assistance of a prison law clerk from the prison law library to assist her in preparing for her January Superintendent's Proceeding. The Wolff Court specifically held that inmates do not have a right to retained or appointed counsel in prison disciplinary proceedings. The Court stated, however, that "where an illiterate inmate is involved...or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or, if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff." 94 S. Ct. at 2982. Since Crooks is

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not illiterate, and since the issues here are not complex, Crooks' right to seek the aid of inmates or staff of her choice would appear to be circumscribed.^{4/} In addition, there has been no showing that Crooks sought and was denied the right to have a sister inmate assist her as a "counsel substitute."

Crooks' right to legal assistance in preparation for her Superintendent's Proceedings is governed by Johnson v. Avery, 393 U.S. 483 (1969), as extended by Wolff to include prison disciplinary proceedings. Wolff v. McConnell, supra, at 2985-86. In Johnson v. Avery, the Supreme Court held that "unless and until the State provides some reasonable alternative to assist inmates in the preparation of petitions....," inmates could not be barred from furnishing legal assistance to each other. 393 U.S. at 490. Here, the prison appointed an individual to assist Crooks, but we have not been shown evidence which would lead us to conclude that the appointed official could not reasonably assist her. There is thus no violation of either Johnson v. Avery or Wolff.

Crooks further asserts that her rights to procedural due process were abridged on the grounds that hearing officer Piacente was biased against her and that he had discussed the charges involved in the January Superintendent's Proceeding with prison officials who had previously sat on an Adjustment ^{4/} Prison officials also appointed a staff assistant to help represent Crooks at both Superintendent's Proceedings. Crooks refused the assistance of the appointed staff person in both instances.

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committee in a prior proceeding in Crooks' case.^{5/} While it is true, as Crooks avers, that a hearing consistent with the due process clause must be conducted by an impartial tribunal, Morrissey v. Brewer, 403 U.S. 471 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970), it does not appear from the record before us that hearing officer Piacente was biased against Crooks.

That his actions involving Crooks were enjoined by two separate courts in September of 1974 and February of 1975 is not dispositive, as Crooks argues, especially since the February injunction was granted by Judge Frankel sitting as an emergency judge when he was not fully apprised of the circumstances surrounding the January Superintendent's Proceeding. In addition, we note that Piacente was not personally involved in the January or February incidents which led to the Superintendent's Proceedings against Crooks. Finally, we do not believe that it is violative of due process for prison officials who sit on Adjustment Committee proceedings to later discuss their findings with the hearing officer at the Superintendent's Proceedings. Assuming the members of the Adjustment Committee are not complaining witnesses or investigating officers, they have served

^{5/} Adjustment Committee proceedings are disciplinary hearings which may result in penalties of "administrative" segregation; their stated goal is remedial rather than punitive. 7 N.Y.C.R.R. §252.

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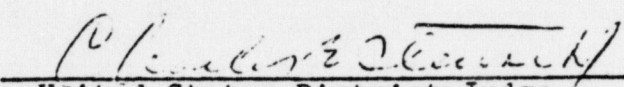
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as neutral arbiters. That they may discuss the proceedings before them with the hearing examiner at the Superintendent's Proceeding does not make the latter into a partisan decision-maker, since he is still obligated by Wolff to act impartially, and base his decision on the evidence presented to him at the Superintendent's Proceeding.

Crooks also contends that she did not receive counselling while in "keeplock" segregation between her Adjustment Committee proceeding on January 13 and her Superintendent's Proceeding on January 15. Although such counselling is required, 7 N.Y.C.R.R. §252.5(c), we do not believe that the prison's purported failure to provide such counselling constitutes a denial of due process.

For the reasons indicated, we deny Crooks' motion for a preliminary injunction, and grant defendants' motion to vacate the temporary restraining order against them entered on February 5 by Judge Frankel.

SO ORDERED.


United States District Judge

Dated: New York, N.Y.
April 9, 1975.

Order & Opinion of April 23, 1975
granting plaintiffs' Motion for
a Preliminary Injunction

0-017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ELIZABETH POWELL, et al.,

Plaintiffs,

-against-

BENJAMIN WARD, et al.,

Defendants.

----- x

APPEARANCES;

Bronx Legal Services Corp. C
Stephen Latimer, Esq.
Attorneys for plaintiffs.

Mortimer Sattler, Esq.
Assistant Attorney General
Attorney for defendants.

O P I N I O N

STEWART, DISTRICT JUDGE:

This is a class action brought pursuant to 42 U.S.C. §1983 to enjoin the officials at New York's two state prisons for women from enforcing prison disciplinary procedures unless and until they comply with the guidelines set forth by the Supreme Court last term in Wolff v. McDonnell, 418 U.S. 539 (1974). Plaintiffs, prisoners at the Bedford Hills and the Fishkill Correctional Facilities, seek inter alia, a preliminary injunction to enjoin defendant prison officials from holding Adjustment Committee disciplinary proceedings without certain procedural safeguards. Hearings on this motion were held before

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this Court last November and December, at which time testimony was heard from inmates and prison officials at Bedford Hills. Since those hearings took place prior to the amendment of plaintiffs' complaint to include the Fishkill facility, we limit our consideration of injunctive relief here to inmates at Bedford Hills.^{1/}

For a preliminary injunction to be granted, irreparable harm to plaintiffs must be demonstrated. Sampson v. Murray, 415 U.S. 61, 88 (1974), quoting Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 506-07 (1959). As the Second Circuit has stated:

[t]he settled rule is that a preliminary injunction should issue only upon a clear showing of either (1) probable success on the merits and possible irreparable injury
....

Sonesta Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973). We believe that injunctive relief is warranted, since we find that plaintiffs come within the ambit of the first test. Plaintiffs have made a clear showing of probable success on the merits; they will also be irreparably harmed in the absence of injunctive relief, since

^{1/} In our order of March 27, 1975, we conditioned our leave to amend the complaint on limiting preliminary injunctive relief, if any, to the subclass of inmates at Bedford Hills, until hearings with respect to Fishkill could be held.

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inmates who are placed in segregation without the procedural safeguards mandated by Wolff v. McDonnell, supra, may be wrongfully deprived of many basic rights and privileges which are granted to the general prison population.

In Wolff v. McDonnell, decided June 26, 1974, the Supreme Court held that prisoners subject to disciplinary proceedings must be accorded the following rights: advance written notice of charges to be given at least 24 hours before a hearing, a written statement by the factfinders of the evidence relied on and the reasons for the disciplinary action, the right to call witnesses and present documentary evidence when doing so does not jeopardize institutional safety or correctional goals, and the right to counsel where the inmate is illiterate or where the issues are unusually complex. 418 U.S. at 563-67, 569-70. As Judge Brieant observed in a similar case involving disciplinary proceedings at Bedford Hills, "While Wolff is primarily concerned with disciplinary procedures relating to denial and revocation of good time credit, its holding applies with equal force to disciplinary procedures which may result in placement in solitary confinement." Crooks v. Warne, 74 Civ. 2351 (S.D.N.Y. 1974). Slip Op. at 17. We agree that any disciplinary proceedings which may result in placement in solitary confinement must conform to the above-enumerated procedural requirements established by the Supreme

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Court in Wolff v. McDonnell, supra.

In New York, there are two basic types of disciplinary procedures, Superintendent's Proceedings and Adjustment Committee Proceedings. 7 N.Y.C.R.R. §§252, 253. The Adjustment Committee Proceeding is "said to be marked by flexibility and non-punitive intent in attempting to effectuate changes in inmate attitude," whereas the Superintendent's Proceeding is "solely disciplinary in nature." Crooks v. Warne, supra at 9. Despite different goals and procedures, both types of proceedings may result in solitary confinement.^{2/} In Crooks v. Warne, supra, Judge Brieant found that:

While there exist a variety of disciplinary procedures available in dealing with the more recalcitrant inmates, such as the Adjustment Committee and Superintendent's Proceedings, there exists only one facility euphemistically denominated "Special Housing" wherein all disciplined inmates are kept under the same conditions of punitive segregation, without regard to the diverse causes and commitment procedures whereby they may be placed there, or the nature of the misconduct involved.

According to Superintendent [Janice] Warne's testimony, all inmates requiring special custodial con-

^{2/} Both Adjustment Committee and Superintendent's Proceedings may result in solitary confinement or segregation. The two types of punishment are similar, since both entail confinement of inmates separate and apart from the general population. The difference is that inmates in special housing are allowed to commingle with each other, whereas those in segregation are not. 7 N.Y.C.R.R. §§300.2(b) and (c). This distinction is unimportant here, since Wolff procedures apply to both special housing and segregation.

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finement are placed in Special Housing.... Among the inmates confined in Special Housing are those placed in "administrative" as well as "punitive" segregation, quarantined inmates and protective custody cases.

The Superintendent admitted under cross-examination that no matter how admission to Special Housing was administratively denominated or how diverse were procedures for commitment thereto, there is no difference in the degree of punitiveness of the conditions of a person so confined. This is so whether commitment was by Adjustment Committee Proceedings or Superintendent's Proceedings. Inmates placed in Special Housing are all locked in 23 hours a day, whether committed for punitive, protective or administrative confinement. The rigors are the same.

Id. at 5-6. On the basis of testimony about post-Wolff disciplinary proceedings by various Bedford Hills inmates and Superintendent Warne before this Court last November and December, we reaffirm these findings. It is clear that it is still the established practice at the Bedford Hills Correctional Facility to place inmates subject to Adjustment Committee Proceedings in the same Special Housing units used for punishing those disciplined under Superintendent's Proceedings. Consequently, since both Superintendent's Proceedings and Adjustment Committee Proceedings may result in placement in solitary confinement, inmates subject to either type of proceeding must be accorded the procedural safeguards set forth in Wolff v. McDonnell, supra.

In this context, we consider the testimony presented

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by Bedford Hills inmates and prison officials regarding the Superintendent's Proceedings and Adjustment Committee Proceedings. Seven inmates described the disciplinary procedures they had undergone before both Adjustment Committees and Superintendent's Proceedings. Many of these inmates were placed in special housing for as long as four weeks by the Adjustment Committee "pending investigation" of charges of participating in a major disruptive incident or "riot" which occurred at Bedford Hills on August 29, 1974. The inmates testified that they were never given written notice of the charges against them prior to any Adjustment Committee Proceeding, and that they appeared before the Adjustment Committee weekly for a review of their confinement. These inmates further testified that they did not receive a written statement of the evidence relied upon by the Adjustment Committee or the reasons for the disciplinary action taken. Testimony demonstrated that this procedure was not peculiar to the August 29 disturbance. Inmate Cyndi Reid testified that she appeared before an Adjustment Committee in July 1974, at which time she did not receive a formal written notice of the charges against her, nor did she receive a written disposition of the findings of the Adjustment Committee and the evidence upon which it relied. Similarly, inmates Margaret Gatling and Diedra Plair testified that they

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appeared before the Adjustment Committee in late October and early November, two months after the disturbance. They too said they were not given written notice of the charges against them or a written disposition detailing the evidence relied upon and the Adjustment Committee's findings.

Superintendent Warne confirmed in her testimony on cross-examination that written notice of the charges against an inmate are not given to the inmate before the Adjustment Committee Proceeding. Moreover, counsel for defendants conceded during the hearings that no written notice of charges is given to inmates before an Adjustment Committee Proceeding.

The evidence adduced at the hearings in this action confirms the finding by Judge Brieant that "[t]he prisoner does not receive advance notice of the proceeding and is not given a written copy of the disposition of the charges."

Crooks v. Warne, supra, at 8. It is thus clear that the defendants have failed to comply with two of the basic procedural requirements set forth by the Supreme Court in Wolff v. McDonnell: they have failed to provide inmates facing Adjustment Committee Proceedings with written notice of the charges against them 24 hours before the proceeding, and they have failed to provide the inmates with a written statement of the dispositions of the Adjustment Committee, together with a statement of the evidence relied on and the reasons for any disciplinary action taken.

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We are thus constrained preliminarily to enjoin the defendants from utilizing Adjustment Committee Proceedings unless and until the inmates are provided with written notice of the charges against them at least 24 hours before a hearing, and unless and until the inmates are given a written statement by the factfinders of the evidence relied upon and the reason for the decision.

Plaintiffs further seek to enjoin defendants from holding Adjustment Committee Proceedings unless and until inmates are permitted to call witnesses in their defense, provided that there is no threat to institutional safety or correctional goals. Wolff v. McDonnell clearly mandates this procedure. Although no inmate testified that she was denied the right to call witnesses at an Adjustment Committee Proceeding, Gerald Burke, Director of Special Housing Units for the New York State Department of Correctional Services, testified on cross-examination that witnesses are not given the opportunity to present witnesses on their behalf at Adjustment Committee Proceedings.^{3/} This testimony was not contradicted by any other witness. Moreover, Judge Brieant stated in Crooks v. Warne that the defendants there had conceded that the Wolff

^{3/} Although Burke modified this statement by explaining that presumably an inmate could request that the Adjustment Committee call certain witnesses on her behalf, he said he had no knowledge that this had ever occurred.

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procedures must be utilized in prison disciplinary proceedings at Bedford Hills, thus agreeing that inmates subject to Adjustment Committee Proceedings must be allowed to call witnesses on their behalf. Crooks v. Warne, supra, at 17.

Testimony at the hearings regarding the Superintendent's Proceedings demonstrated that inmates are generally given formal written notification of the charges pending against them. For example, inmates Cyndi Reid and Margaret Gatling testified that they received written notice of the charges against them at least one day before their Superintendent's Proceedings were held. Inmate Marsha Padilla testified, however, that she did not receive written notice of the charges against her until the evening before her Superintendent's Proceeding. She further testified that she was not given a copy of the charges against her, although she was allowed briefly to look at the formal charges. Although inmates at Superintendent's Proceedings are generally given written notification of the charges 24 hours before their Superintendent's Proceedings, we conclude that injunctive relief is warranted here to assure inmates at Bedford Hills that the standards of Wolff v. McDonnell are met in all instances.

There was little testimony presented regarding the right of inmates to call witnesses on their behalf at Superintendent's Proceedings. Inmate Margaret Gatling testified that

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she understood that inmates were not allowed to call their own witnesses at Superintendent's Proceedings. This testimony was not contradicted by either Superintendent Warne or Frances Clement, Deputy Superintendent for Security, who conducted numerous Superintendent's Proceedings. Significantly, no instance was cited where an inmate did call witnesses on her behalf. Moreover, the inmates' descriptions of the Superintendent's Proceedings, which we find credible, indicate that inmates were not asked if they wished to call witnesses on their behalf. Although inmates might have been allowed to call witnesses, had they asked, we believe defendants have an obligation to inform inmates that they are entitled to call witnesses at Superintendent's Proceedings. We thus believe that injunctive relief is again appropriate against defendants to assure inmates that this aspect of Wolff procedures will be followed.

Finally, although testimony at trial indicated that inmates in some instances have received written statements of the evidence relied upon and of the reasons for their disposition, neither Warne nor Clement testified that this was the standard procedure. Thus, we believe injunctive relief against defendants also is warranted on this point.

We conclude that Wolff procedures must be followed for both Adjustment Committee Proceedings and Superintendent's

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Proceedings, and that for all proceedings which may result in confinement in special housing: (1) formal written notification of the charges must be given to the inmate at least 24 hours before the hearing; (2) at the hearing the inmate may call witnesses on her behalf, provided that doing so does not jeopardize institutional safety or correctional goals; (3) at the conclusion of the hearing the prisoner shall be given a written statement of the evidence relied on and the reasons for any action taken. This holding does not preclude plaintiff from being "confined administratively for that brief period required to draft and file charges and to give the required 24 hours written notice of hearing following any alleged episode involving violence or assaultive or disruptive behavior." Crooks v. Warne, supra, at 25. Moreover, we believe that no prisoner should be confined to special housing for more than seven days while her case is "pending investigation" by the Adjustment Committee.

We agree with Judge Brieant that:

So long as Bedford Hills continues to provide only one kind of segregated confinement...similar disciplinary due process safeguards must attend all such inmates who are placed therein. It is implicit in Wolff that should the administration see fit to provide separate facilities for "keep-lock" or administrative segregation, without so great a diminution of privileges as attends punitive segregation, that full Wolff procedures are not necessarily applicable.

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Crooks v. Warne, supra, at 25-26.^{4/}

Finally, we must decide the extent to which officers involved in the incident of alleged misbehavior or with alleged conflicts of interest should be barred from presiding over disciplinary proceedings. Inmates Margaret Gatling and Marsha Padilla testified that Lieutenant Wilson had participated in the investigation of the August 29 incident at Bedford Hills and later sat on Adjustment Committee Proceedings involving their purported misbehavior. This testimony was uncontradicted. There was also testimony by Deputy Superintendent Clement that she sat as hearing officer at Superintendent's Proceedings involving alleged acts of misbehavior occurring on August 29th. Counsel for plaintiffs urges that her position as Deputy Superintendent for Security Services created an impermissible degree of bias, since the charges in those proceedings involved perceived threats to the security of the institution, a subject of direct concern to Deputy Superintendent Clement.

^{4/} Judge Brieant also found that "[i]n the event that the administration concludes upon the basis of an objective factual determination made in good faith by a disinterested official that plaintiff must be kept away from the general prison population, such non-punitive segregation must be so calculated as to grant her every privilege or benefit that may be conferred. Such administrative segregation cannot be imposed on the same basis as punitive segregation." Crooks v. Warne, supra at 24.

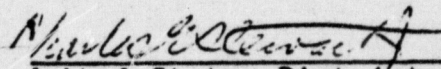
ORDER & OPINION
of April 23, 1975

It is standard administrative law that an administrative hearing examiner must be impartial. Morrissey v. Brewer, 408 U.S. 471 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970). Neither Wolff nor Sostre v. McGinnis, 442 F.2d 178 (2d Cir.), cert. denied, 404 U.S. 1049 (1971), the leading pre-Wolff prisoners' rights case, establishes specified criteria for neutral and detached hearing officers. We believe, however, that it is implicit in the notions of fairness in the due process clause that a hearing officer should not have been an investigative officer or witness. Crooks v. Warner, supra, at 19. We also conclude that it is improper for a prison official whose primary concern is prison security to preside over Superintendent's Proceedings (or Adjustment Committee Proceedings) where the alleged misbehavior purportedly threatened the security of that same institution. We thus enjoin defendants from holding disciplinary proceedings which may result in confinement in special housing where either hearing officers have been witnesses or investigative officers, or the Deputy Superintendent for Security Services or someone similarly situated presides over hearings concerning incidents which purportedly threaten the security of the prison.

This opinion shall be considered the findings of fact and conclusions of law in accordance with Rule 52(a), F.R. Civ. P. Settle order on five days notice.

SO ORDERED.

Dated: New York, N.Y.
April 23, 1975.


United States District Judge

FINAL ORDER OF June 23, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ELIZABETH POWELL, et al.,

Plaintiffs,

-against-

BENJAMIN WARD, et al.,

Defendants.
----- x

:
: 74 Civ. 4628

:
: ORDER

This action having come on for hearing before the Court on November 27, December 3, 4, 13 and 16, 1974, Hon. Charles E. Stewart, Jr., presiding, on Plaintiffs' Motion for a preliminary injunction, and the Court, on April 23, 1975, having rendered its findings of fact and conclusions of law, IT IS ORDERED THAT:

1. Defendants shall conduct all Adjustment Committee or Superintendent's Proceedings, or other disciplinary proceedings that may result in an inmate at Bedford Hills Correctional Facility being confined in a Special Housing Unit or Segregation Unit, in accordance with the following procedures:

- a) Formal written notice of charges must be served on the inmate at least 24 hours before the hearing;
- b) The inmate shall be permitted to call witnesses on her behalf provided that so doing does not jeopardize institutional safety or correctional goals. The written notice of charges served in accordance with Paragraph 1 (a), shall inform the inmate of her right to call witnesses;

FINAL ORDER OF June 23, 1975

- c) If permission to call a witness is denied, the party conducting the hearing shall give the inmate a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented by the witness.
- d) At the conclusion of the hearing, the inmate shall be given a written statement of the evidence relied on and the reasons for any action taken;
- e) No person who has participated in any investigation of the acts complained of, or who was a witness to those acts shall be a member of any Adjustment Committee or Superintendent's Proceeding relating to those acts;
- f) Neither the Deputy Superintendent for Security, nor any person whose job involves direct responsibility for institutional security, shall be a member of any Adjustment Committee or Superintendent's Proceeding at which an inmate is charged with an act which purportedly threatens the security of the prison.

2. If any inmate is confined to Special Housing or segregation "pending investigation" of charges, a hearing must be held within seven days of the date of her confinement.

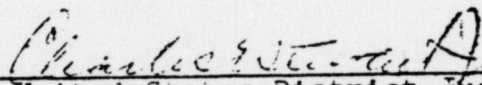
3. Counsel for Plaintiffs shall notify all members of the Class of the entry of this order. Plaintiffs' counsel shall deliver to Defendant WARNE sufficient copies of the Notice annexed as Exhibit "A", describing this order and the Court's opinion dated April 23, 1975, so that the Notice may be posted as set forth in Paragraph

4.

FINAL ORDER OF June 23, 1975

4. Defendant Warne shall cause copies of the Notice to be placed and affixed in conspicuous places in each building used to house inmates, including the hospital building, the legal library, and the reading library.

SO ORDERED.


United States District Judge

Dated: New York, N. Y.
June 23, 1975.

NOTICE OF APPEAL

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
ELIZABETH POWELL, et al., :
 :
 Plaintiffs, : NOTICE OF APPEAL
 :
 -against- : 74 Civ. 4628
 :
 BENJAMIN WARD, et al., : (C.E.S.)
 :
 Defendants. :
-----X

S I R S :

PLEASE TAKE NOTICE that the defendants hereby appeal
to the United States Court of Appeals for the Second Circuit
from an order of this Court, entered on June 24, 1975.

Dated: New York, New York
July 23, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Office & P.O. Address
Two World Trade Center
New York, New York 10047
By

MARGERY EVANS REIFLER
Assistant Attorney General
Tel. (212) 488-7590

TO: STEPHEN M. LATIMER, ESQ.
Bronx Legal Services,
Corp. C
579 Courtlandt Avenue
Bronx, NY 10451

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

SUSAN D. CHIECO , being duly sworn, deposes and
says that she is employed in the office of the Attorney
General of the State of New York, attorney for Defendants-Appellants
herein. On the 3rd day of November , 1975 , she served
Appendix
the annexed/upon the following named person :

STEPHEN LATTIMER, ESQ.
Bronx Legal Services, Corp. C
579 Courtlandt Avenue
Bronx, New York 10451

Attorney in the within entitled action by depositing
of Appendix
a true and correct copy/thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by the
Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said Attorney at the
address within the State designated by him for that
purpose.

Susan D. Chieco

Sworn to before me this
3rd day of November , 1975

Margaret Evans Rindley
Assistant Attorney General
of the State of New York

